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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/530,068

09/30/2005

Yasushi Enokido

81864.0058

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10/04/2007

HOGAN & HARTSON L.L.P.  
1999 AVENUE OF THE STARS  
SUITE 1400  
LOS ANGELES, CA 90067

EXAMINER

KUNEMUND, ROBERT M

ART UNIT

PAPER NUMBER

1722

MAIL DATE

DELIVERY MODE

10/04/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/530,068

**Applicant(s)**

ENOKIDO, YASUSHI

**Examiner**

Robert M. Kunemund

**Art Unit**

1722

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 20-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date see papers.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

Claims 20 to 22 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on July 23, 2007.

***Claim Rejections - 35 USC § 103***

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 to 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leung et al (6,555,406) in view of Aoki et al (2003/0020501).

The Leung et al reference teaches a method of creating photonic crystals. A first layer is fabricated with two dielectric materials. One of the materials is air. The layer is made so that the materials are formed in a periodic array in one plane. A second layer can be created in the same manner as the first with the same materials, note figures. The sole difference between the instant claims and the prior art is the lamination step. However, the Aoki et al reference teaches combining two or more photonic layers together by lamination, note figures. It would have been obvious to one of ordinary skill in the art to modify the Leung et al reference by the teachings of the

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Aoki et al reference to laminate the layer together in order to ensure proper alignment of the layers creating a more uniform structure.

Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leung et al (6,555,406) in view of Aoki et al (2003/0020501).

The Leung et al and Aoki et al references are relied on for the same reasons as stated, supra, and differ from the instant claims in the method of creating the layers. However, it would have been obvious to one of ordinary skill in the art to determine through routine experimentation the optimum, operable formation technique in the combine references in order to create a uniform pattern.

Claims 8 to 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leung et al (6,555,406) in view of Aoki et al (2003/0020501).

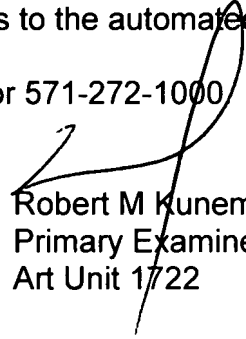
The Leung et al and Aoki et al references are relied on for the same reasons as stated, supra, and differ from the instant claims in the filling of the second dielectric. However, it would have been obvious to one of ordinary skill in the art to determine through routine experimentation the optimum, operable second dielectric filling in the combine references in order to make a crystal with the desired properties.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M. Kunemund whose telephone number is 571-272-1464. The examiner can normally be reached on 8 hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on 571-272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Robert M Kunemund  
Primary Examiner  
Art Unit 1722

RMK